



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0302]

RIN 1625-AA00

Safety Zone; Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Cape Fear River near Wilmington, North Carolina. This temporary safety zone is intended to restrict vessel traffic on the Cape Fear River from September 11, 2019, through December 15, 2019, while work crews replace power transmission lines crossing over the river. This proposed rulemaking would prohibit vessels or persons from being in the safety zones unless specifically authorized by the Captain of the Port (COTP) North Carolina or a designated representative.

DATES: This rule is effective without actual notice from September 11, 2019, through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. For the purposes of enforcement, actual notice will be used from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 15, 2019. This rule will be enforced from 6:30 a.m. to 2:30 p.m on September 11 through 13, September 24 through 26, October 15 through 17, and October 29 through 31, 2019. These times and

dates may change due to weather and equipment delivery changes.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0302 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Petty Officer Matthew Tyson, Waterways Management Division, U.S. Coast Guard Sector North Carolina, Wilmington, NC; telephone: (910) 772–2221, email: Matthew.I.Tyson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On April 23, 2019, Duke Energy provided the Coast Guard with details concerning the upgrading of towers and replacement of power transmission lines crossing over the Cape Fear River near Wilmington, North Carolina, to be conducted from July 15, 2019, through October 31, 2019. Work will be done on two steel towers located at approximate positions 34°08'52"N, 077°57'14"W and 34°08'59"N, 077°56'56"W (NAD 1983), and the power transmission lines suspended between those towers. This upgrade process will require the complete closure of the navigation channel on multiple days during the stated upgrade period. In response, on May 24, 2019, the Coast Guard

published a notice of proposed rulemaking (NPRM) titled *Safety Zone; Cape Fear River, Wilmington, NC* (84 FR 24061) that proposed a safety zone within 100 yards of the power transmission line crossing. There, we stated why we issued the NPRM and invited comments on our proposed regulatory action related to the replacement of power transmission lines over the Cape Fear River. No comments were received during our comment solicitation period which ran through June 24, 2019. During the comment period, Duke Energy requested to change the work period to September through mid-December, instead of mid-July through the end of October, as proposed in the NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed protect persons, vessels, and the marine environment on the navigable waters of the Cape Fear River while power transmission lines are replaced over the water.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP) North Carolina has determined that potential safety hazards associated with power transmission line replacement work would be a concern for anyone transiting the Cape Fear River. The purpose of this rule is to protect persons, vessels, and the marine environment on the Cape Fear River while power transmission lines are replaced over the water.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published May 24, 2019. There is a change in the regulatory text of this rule from the proposed rule, shifting the work period. Due to equipment delivery delays, Duke Energy changed the work period to September through mid-December 2019, instead of mid-July through the end of October, as proposed in the NPRM.

Additionally, in paragraph (a), “Location” we changed the word “areas” to “area.”

This rule establishes a safety zone on a portion of the Cape Fear River from September 11 through December 15, 2019, to be enforced while Duke Energy replaces power transmission lines over the river. Duke Energy reports its work crews will need to access the navigation channel for twelve eight-hour days, three days at a time, over four separate weeks in order to replace the power transmission lines. Due to the nature of the work and the hazards it presents to workers and the public, the COTP has identified the need to close that Cape Fear River in the vicinity of the power line crossing while this work is ongoing. On days the safety zone will be enforced, the effected section of the river will be closed from 6:30 a.m. through 2:30 p.m. Currently, the planned enforcement dates are September 11th through 13th, September 24th through 26th, October 15th through 17th, and October 29th through 31st, 2019. These times and dates may change due to weather and equipment delivery changes. Exact dates and times will be announced by broadcast notice to mariners at least two days prior to each closure. This safety zone will include all navigable waters of the Cape Fear River within 100 yards of the power transmission line crossing, from approximate position 34°08’49”N, 077°57’32”W, then northeast to 34°09’07”N, 077°56’41”W, then south along the shoreline to 34°09’03”N, 077°56’41”W, then southwest to 34°08’42”N, 077°57’28”W,

then north along the shoreline to the point of origin. No vessel or person will be permitted to enter the safety zone unless specifically authorized by the COTP or a designated representative. Vessels with an air draft less than 30 feet will be permitted to pass through the safety zone approximately every two hours during enforcement, when directed by the Coast Guard or designated security vessels.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the proposed safety zone. Vessels will not be allowed to enter or transit a portion of the Cape Fear River during active power transmission line replacement as above. Specific enforcement dates and times for channel closures will be broadcast at least 48 hours in advance and vessels will be able to transit the Cape Fear River at all other times. The Coast Guard will issue a Local Notice to Mariners and transmit a Broadcast Notice to

Mariners via VHF-FM marine channel 16 regarding the safety zone. Because this portion of the Cape Fear River is a high traffic area, we created this rule to accommodate smaller vessels so that vessels with an air draft less than 30 feet will be permitted to pass through the safety zone approximately every two hours during enforcement, when directed by the Coast Guard or designated security vessels.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has

implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 96 hours over 12 separate days that will prohibit entry within 100 yards of power transmission lines over the Cape Fear River near Wilmington, NC. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are

asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 – REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0302 to read as follows:

§ 165.T05-0302 Safety Zone; Cape Fear River, Wilmington, NC.

(a) Location. The following area is a safety zone: All navigable waters of the Cape Fear River within 100 yards of the power transmission line crossing, from approximate position 34°08'49"N, 077°57'32"W, then northeast to 34°09'07"N, 077°56'41"W, then south along the shoreline to 34°09'03"N, 077°56'41"W, then southwest to 34°08'42"N, 077°57'28"W (NAD 1983), then north along the shoreline to the point of origin near Wilmington, NC.

- (b) Definitions. As used in this section---

Captain of the Port means the Commander, Sector North Carolina.

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port North Carolina (COTP) for the enforcement of the safety zone.

Work crews means persons and vessels involved in the replacement of power transmission lines.

(c) Regulations. (1) The general regulations governing safety zones in § 165.23 apply to the areas described in paragraph (a) of this section.

(2) With the exception of work crews, entry into or remaining in this safety zone is prohibited unless authorized by the COTP North Carolina or the COTP North Carolina's designated representative. All other vessels must depart the zone immediately.

(3) Vessels with an air draft less than 30 feet will be permitted to pass through the safety zone approximately every two hours during enforcement, when directed by the Coast Guard or designated security vessels.

(4) The Captain of the Port, North Carolina can be reached through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina at telephone number 910-343-3882.

(5) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65 MHz) and channel 16 (156.8 MHz).

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) Enforcement Period. This regulation will be enforced from 6:30 a.m. to 2:30

p.m on September 11 through 13, September 24 through 26, October 15 through 17, and October 29 through 31, 2019. These times and dates may change due to weather and equipment delivery changes.

(f) Public Notification. The Coast Guard will notify the public of the active enforcement times at least 48 hours in advance by transmitting Broadcast Notice to Mariners via VHF-FM marine channel 16.

Dated: September 9, 2019

Bion B. Stewart,
Captain, U. S. Coast Guard
Captain of the Port North Carolina.

[FR Doc. 2019-19806 Filed: 9/11/2019 8:45 am; Publication Date: 9/12/2019]